

Office of Chief Counsel  
Internal Revenue Service

**memorandum**

CC:NER:MAN:TL-N-134-00  
PLDarcy

date:

to: District Director, Manhattan  
Examination Division  
Attn: Mr. Lawrence Paduano

from: District Counsel, Manhattan

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subject: [REDACTED]

Tax Years Ended November [REDACTED], November [REDACTED], November [REDACTED],  
November [REDACTED], November [REDACTED] and [REDACTED].

Determination of the Tax Matters Partner

Uniform Issue List # 6229.02-00 and 6231.07-00

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This memorandum responds to your request for advice on determining who may execute a Form 872-P on behalf of [REDACTED] ("Partnership"), a New York partnership subject to the uniform partnership audit procedures, I.R.C. § 6221 et. seq. The advice rendered in this memorandum is conditioned on the accuracy of the facts presented to us. This advice is subject to National Office review. We will contact you within two weeks of the date of this memorandum to discuss the National Office's comments, if any, about this advice.

ISSUE:

1. Who may execute a Form 872-P on behalf of the Partnership for the taxable years ended November [REDACTED], November [REDACTED], November [REDACTED], November [REDACTED] and [REDACTED]?

CONCLUSION:

In this case, only the tax matters partner ("TMP") of the Partnership may execute an 872-P. We conclude that [REDACTED] is currently the TMP of the Partnership for the taxable years ended November [REDACTED], November [REDACTED] and November [REDACTED]. For the taxable years ended November [REDACTED], November [REDACTED] and May [REDACTED], we conclude that [REDACTED] is currently the Partnership's TMP.

FACTS:

THE ADVICE IS RENDERED ON THE BASIS THAT ALL THE REPRESENTATIONS AND FACTS IN THIS MEMORANDUM ARE CORRECT. WE RECOMMEND THAT YOU VERIFY THIS INFORMATION. IF ANY OF THE REPRESENTATIONS AND/OR FACTS ARE INCORRECT OR CANNOT BE SUBSTANTIATED, WE MAY NEED TO MODIFY OUR ADVICE.

A. INTRODUCTION

The Examination Division is currently auditing the taxable years ended November [REDACTED] through [REDACTED] of the Partnership, a New York partnership subject to the uniform partnership audit procedures. I.R.C. § 6221 et. seq. The parties seek to extend the statute of limitations on assessment for these periods. You have requested our advice to assist you in identifying who may execute Forms 872-P on behalf of the Partnership.

In a memorandum dated [REDACTED], the Partnership's counsel, [REDACTED], urges the Internal Revenue Service to accept the [REDACTED] "designation" by [REDACTED] (" [REDACTED] ") of the [REDACTED] as the TMP for the taxable years ended November 25, [REDACTED], November 24, [REDACTED] and November 29, [REDACTED]. The Partnership further argues that the current TMP for the Partnership's tax years ended November [REDACTED], November [REDACTED] and [REDACTED] is [REDACTED]. See Partnership's Memorandum, pp. 13-15. We disagree with the Partnership's conclusion for the taxable years ended November 25, [REDACTED], November 24, [REDACTED] and November 29, [REDACTED]; however, we agree that the current TMP for the Partnership's tax years ended November [REDACTED], November [REDACTED] and [REDACTED] is [REDACTED]. To assist you in responding to the Partnership, we have attached

the body of a proposed letter that you can provide to the Partnership explaining the position of the Internal Revenue Service in this matter.

B. The Tax Matters Partner Of The Partnership

On its Federal partnership income tax returns ("Forms 1065") for the taxable years ended November [REDACTED], November [REDACTED] and November [REDACTED], the Partnership designated [REDACTED], in her personal capacity, as the TMP. On its Forms 1065 for the taxable years ended November [REDACTED], November [REDACTED] and [REDACTED], the Partnership designated [REDACTED] as the TMP. [REDACTED] still remains in existence.

Prior to [REDACTED], the Partnership had several general partners, including [REDACTED] and [REDACTED] ("[REDACTED]"). In November [REDACTED] and again in November [REDACTED], each general partner of the Partnership executed a Power of Attorney and Consent ("POA") authorizing allowing a member of [REDACTED]'s Management Committee to act on their behalf in connection with respect to the Partnership.

At the beginning of the tax year ended November [REDACTED], [REDACTED], [REDACTED] and the Partnership's other general partners ceased to be partners of the Partnership. The Partnership's memorandum does not give details on this change of partners. As a result of this partnership change, [REDACTED], a Delaware corporation, and [REDACTED], a Delaware limited partnership, became the sole general partners of the Partnership.<sup>1</sup> During [REDACTED], the Management Committee of [REDACTED]

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<sup>1</sup> Pursuant to I.R.C. §§ 6621 and 6231(a)(1)(B)(i), the uniform partnership proceedings do not apply to any partnership having 10 or fewer partners each of whom is an individual (other than a nonresident alien), a C corporation, or an estate of a deceased partner ("small partnership exception"). If the uniform partnership proceedings do not apply, the statute of limitations is determined on the partner level. See I.R.C. § 6501. In this case, the facts indicate that partnership called [REDACTED] was a partner of the Partnership. Accordingly, the small partnership exception to the uniform partnership does not apply and the statute of limitations must be extended at the partnership level. Prop. Treas. Reg. §301.6231(a)(1)-1(a)(2). However, it is imperative that in this case and in the cases of the other [REDACTED] partnerships that you determine whether the small partnership exception applies.

was renamed the Executive Committee. The Executive Committee was comprised of former general partners of the Partnership and current officers of [REDACTED].

On [REDACTED], the Executive Committee of [REDACTED] passed the following resolution ostensibly designating a new TMP of the Partnership:

The Executive Committee designates [REDACTED] as the TMP with respect to the Internal Revenue Service examination of the United States Partnership Income Tax Returns of [the Partnership] for the fiscal years ended November 25, [REDACTED]; November 24, [REDACTED]; November 29, [REDACTED]; and November 28, [REDACTED]. [REDACTED] in her capacity of Executive Vice President will act on behalf of [REDACTED].

(hereinafter we refer to this document as the "Executive Committee Resolution"). [REDACTED] executed the Executive Committee Resolution on behalf of the Executive Committee. At the time, [REDACTED] was the Executive Vice Chairman of [REDACTED] and the member of the Executive Committee who generally dealt with tax matters. Shortly thereafter, in [REDACTED], [REDACTED] submitted the Executive Committee Resolution to the Examination Division. The Partnership never filed the Executive Committee Resolution with any Internal Revenue Service service center. Additionally, [REDACTED] was not a partner of the Partnership at the time [REDACTED] executed the Executive Committee Resolution.

DISCUSSION:

1. THE PROPER PERSON TO EXECUTE INTERNAL REVENUE SERVICE FORMS 872-P ON BEHALF OF THE PARTNERSHIP FOR THE TAXABLE YEARS ENDED NOVEMBER [REDACTED], NOVEMBER [REDACTED] AND NOVEMBER [REDACTED]

The Partnership's Forms 1065 for the taxable years ended November [REDACTED], November [REDACTED] and November [REDACTED] specifically designated [REDACTED], in her personal capacity, as the TMP. We believe that [REDACTED], in her personal capacity as TMP, is the only proper party to execute any Forms 872-P for these taxable years. I.R.C. § 6229(b)(1)(B). However, [REDACTED] does not want to execute future Forms 872-P and the Partnership has argued that [REDACTED] may execute all future Forms 872-P for these periods. We advise you that for the taxable years ended

November [REDACTED], November [REDACTED] and November [REDACTED], you should only accept Forms 872-P executed by [REDACTED], individually as TMP, unless, and until, the Partnership properly designates a new TMP or gives another person the authority to execute a valid Form 872-P.

Pursuant to I.R.C. § 6229(b)(1)(B) the Internal Revenue Service can extend the statute of limitations with respect to the assessment of partnership items by entering into an agreement with the tax matters partner (or any other person authorized by the partnership in writing to enter into such an agreement) before the expiration of such period. (Emphasis added). Treasury Regulation § 301.6229(b)-1(T) states that:

Any partnership may authorize any person to extend the period described in section 6229(a) with respect to all partners by filing a statement to that effect with the service center with which the partnership return is filed. The statement shall:

- (a) Provide that it is an authorization for a person other than the TMP to extend the assessment period with respect to all partners,
- (b) Identify the partnership and the person being authorized by name, address, and taxpayer identification number,
- (c) Specify the partnership taxable year or years for which the authorization is effective, and
- (d) Be signed by all persons who were general partners at any time during the year or years for which the authorization is effective.

We do not believe the Executive Committee Resolution complies with Treasury Regulation § 301.6229(b)-1. First, the Partnership never filed this document with the service center where it filed its Forms 1065. Second, this document does not specifically authorize the [REDACTED] to extend the assessment period with respect to all partners as required by Treasury Regulation § 301.6229(b)-1(a). Third, the document does not identify the [REDACTED]'s address and taxpayer identification number as required by Treasury Regulation § 301.6229(b)-1(b). Finally, the document is executed only by a representative of [REDACTED]'s Executive Committee and not by "all persons who were general partners at any time during the

year...for which the authorization is effective (emphasis added)" as required by Treasury Regulation § 301.6229(b)-1(d).

Since the Partnership never authorized a person other than the TMP to execute a Form 872-P for the taxable years ended November [REDACTED], November [REDACTED] and November [REDACTED], only the TMP can execute a Form 872-P for these years. We also note that, on [REDACTED], the date of the Executive Committee Resolution, [REDACTED], whose executive committee passed such a resolution, was not a partner in the Partnership.

2. WHO IS THE PARTNERSHIP'S TMP FOR THE TAXABLE YEARS ENDED NOVEMBER [REDACTED], NOVEMBER [REDACTED] AND NOVEMBER [REDACTED]

Pursuant to Treasury Regulation § 301.6231(a)(7)-1(a) a partnership may designate a partner as its TMP or revoke a current TMP's status only as provided for in Treasury Regulation § 301.6231(a)(7)-1. (Emphasis added). On its Forms 1065 for the taxable years ended November [REDACTED], November [REDACTED] and November [REDACTED], the Partnership properly designated [REDACTED] as its TMP. Treas. Reg. § 301.6231(a)(7)-1(c). [REDACTED]'s designation as TMP for these taxable years remains in effect until such time as she properly resigns as TMP pursuant to Treasury Regulation § 301.6231(a)(7)-1(i); the Partnership makes a valid designation of a new TMP pursuant to Treasury Regulations §§ 301.6231(a)(7)-1(d), (e) or (f); or the Partnership revokes [REDACTED]'s TMP designation pursuant to Treasury Regulation § 301.6231(a)(7)-1(j).<sup>2</sup> Treas. Reg. §§ 301.6231(a)(7)-1(L)(1)(v)(A-C). Although the Partnership argues that it

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<sup>2</sup> Treasury Regulation § 301.6231(a)(7)-1(j) permits the Partnership to revoke [REDACTED]'s TMP designation by filing a statement of revocation with the service center. The content requirements of such a revocation essentially mirror those of Treasury Regulation § 301.6231(a)(7)-1(e) dealing with designating a TMP. Since the Partnership has not filed any document purporting to revoke [REDACTED]'s TMP status, we will not provide a detailed discussion on the revocation issue. However, we do conclude that the Executive Committee Resolution submitted by the Partnership does not constitute a revocation of [REDACTED]'s TMP status pursuant to Treasury Regulation § 301.6231(a)(7)-1(j). Additionally, [REDACTED] never executed any document that the Internal Revenue Service could reasonably consider a resignation under Treasury Regulation § 301.6231(a)(7)-1(i).

complied with the provisions of Treasury Regulations §§ 301.6231(a)(7)-1(d) and (e), we disagree.

Pursuant to Treasury Regulation § 301.6231(a)(7)-1(e), a partnership may designate a TMP for a specific taxable year at any time after the filing of its Form 1065 for that taxable year by filing a statement with the service center with which the Form 1065 was filed. According to the Treasury Regulations, this statement shall:

- (1) Identify the Partnership and the designated partner by name, address, and taxpayer identification number;
- (2) Specify the Partnership taxable year to which the designation relates;
- (3) Declare that it is a designation of a TMP for the taxable years specified; and
- (4) Be signed by persons who were general partners at the close of the year and were shown on the return for that year to hold more than 50 percent of the aggregate interest in partnership profits held by all general partners as of the close of that taxable year.

The Executive Committee Resolution purporting to designate [REDACTED] as the new TMP clearly does not comply with Treasury Regulation § 301.6231(a)(7)-1(e) and, therefore, is not effective. The Partnership never filed the designation with the service center where it filed its Forms 1065. Furthermore, the designation does not identify [REDACTED]'s address and taxpayer identification number as required by Treasury Regulation § 301.6231(a)(7)-1(e)(1).

Most important, the designation is executed only by [REDACTED], as a representative of [REDACTED]'s Executive Committee, and not by "persons who were general partners at the close of the year and were shown on the return for that year to hold more than 50 percent of the aggregate interest in partnership profits held by all general partners as of the close of that taxable year" as required by Treasury Regulation § 301.6231(a)(7)-1(e)(4). The Partnership appears to assume that [REDACTED]'s signature can substitute for the Treasury Regulation's requirement that any designation be signed by the general partners holding more than 50 percent of the aggregate interest in the Partnership's profits. We found nothing in New York law concerning the authority of a partnership committee such as the Executive

Committee in this case. However, the issue in this case is strictly a Federal tax law issue governed by the Internal Revenue Code and accompanying Treasury Regulations. Additionally, the applicable Treasury Regulations do not permit another to act on behalf of a general partner through a POA; each general partner must execute any document purporting to designate a new TMP. Finally, [REDACTED] was no longer a partner in the Partnership on [REDACTED], the date of the Executive Committee Resolution. Accordingly, we do not believe that the Partnership properly designated the [REDACTED] as TMP.

The Partnership further argues that [REDACTED], as TMP, properly "designated" a new TMP by tendering the Executive Committee Resolution to the District Director. Treasury Regulation §301.6231(a)(7)-1(d) permits a current TMP to certify that a new TMP has been properly selected. Treasury Regulation §301.6231(a)(7)-1(d) does not permit a TMP to actually designate a new TMP. Pursuant to Treasury Regulation §301.6231(a)(7)-1(d), the current tax matters partner shall make the certification by filing with the service center with which the Partnership return is filed a statement that--

(1) Identifies the Partnership, the partner filing the statement, and the successor tax matters partner by name, address, and taxpayer identification number;

(2) Specifies the Partnership taxable year to which the designation relates;

(3) Declares that the partner filing the statement has been properly designated as the tax matters partner of the Partnership for the Partnership taxable year and that that designation is in effect immediately before the filing of the statement;

(4) Certifies that the other named partner has been selected as the tax matters partner of the Partnership for that taxable year in accordance with the Partnership's procedure for making that selection; and

(5) Is signed by the partner filing the statement.

The Executive Committee Resolution purporting to certify [REDACTED] as the new TMP clearly does not comply with Treasury Regulation § 301.6231(a)(7)-1(d) and, therefore, is not effective. First, it does not provide [REDACTED]'s address and taxpayer identification number as required by Treasury Regulation § 301.6231(a)(7)-1(d)(1). Second, it does



not specifically certify that [REDACTED] has been selected as the TMP in accordance with the Partnership's procedure for making that selection as required by Treasury Regulation § 301.6231(a)(7)-1(d)(1)(4). Finally, it was not signed by [REDACTED], the partner filing the statement, as required by Treasury Regulation § 301.6231(a)(7)-1(d)(1)(5).

3. WHO IS THE PARTNERSHIP'S TMP FOR THE TAXABLE YEARS ENDED NOVEMBER [REDACTED], NOVEMBER [REDACTED] AND MAY [REDACTED]

On its Forms 1065 for the taxable years ended November [REDACTED], November [REDACTED] and [REDACTED], the Partnership properly designated [REDACTED] as its TMP. Treas. Reg. § 301.6231(a)(7)-1(c). [REDACTED]'s designation as TMP for these taxable years remains in effect until such time as it properly resigns as TMP pursuant to Treasury Regulation § 301.6231(a)(7)-1(i); the Partnership makes a valid designation of a new TMP pursuant to Treasury Regulations §§ 301.6231(a)(7)-1(d), (e) or (f); the Partnership revokes [REDACTED]'s TMP designation pursuant to Treasury Regulation § 301.6231(a)(7)-1(j); or [REDACTED] liquidates or dissolves. Treas. Reg. §§ 301.6231(a)(7)-1(L)(1)(iii) and (v)(A-C). Since the facts indicate that none of these events occurred, we believe that [REDACTED] is the Partnership's current TMP for taxable years ended November [REDACTED], November [REDACTED] and [REDACTED].

We again remind you that this advice, including the proposed letter to the taxpayer attached hereto, is subject to review by the National Office. As discussed on page one, we will contact

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you within two weeks of the date of this memorandum to discuss any comments the National Office may have regarding this advice. Should you have any questions regarding this matter, please contact Paul Darcy at (212) 264-5473 extension 256.

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